

FILED

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

MAY 30 PM 6:21

In re:	)	Chapter 11	CLERK
	)		US BANKRUPTCY COURT
W. R. GRACE & CO., et al	)		DISTRICT OF DELAWARE
	)	Case No. 01-01139 (JFK)	
)		
Debtors.	)	(Jointly Administered)	
)		

**NOTICE OF FILING OF AMENDED PROOF OF CLAIM
OF MARCO BARBANTI (ZONOLITE ATTIC INSULATION)**

Please take notice that on May 30, 2002, Marco Barbanti filed the attached Amended Proof of Claim with the Court, and served it upon all parties on the attached service list.

ELZUFON AUSTIN REARDON
TARLOV & MONDELL, P.A.

/s/ William D. Sullivan
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Dated: May 30, 2002

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
)	
W.R. GRACE & CO., et al.	)	Bankruptcy No. 01-01139 (JFK)
	)	(Jointly Administered)
Debtors.)	
	)	Objection Deadline: TBD
	)	Hearing Deadline: TBD

AMENDED PROOF OF CLAIM OF MARCO BARBANTI
(ZONOLITE ATTIC INSULATION)

COMES NOW Marco Barbanti and presents an Amended and Restated Proof of Claim against the debtors¹.

I. Name of Debtor: W.R. Grace & Company-Conn. (a Connecticut corporation); W.R. Grace & Co., (f/k/a Grace Specialty Chemicals, Inc.); W.R. Grace & Co., a/k/a Grace, an association of business entities, including corporations identified as "The Debtor" in the caption of *In re: W.R. Grace & Co., et al.*

II. Name of Creditor:
Marco Barbanti
1407 W Mansfield Ave.
Spokane, WA 99205

¹Marco Barbanti files this amendment to the "Proof of Claim" filed by W.R. Grace, in his individual capacity and under the circumstances detailed in this Amended Proof of Claim. Marco Barbanti expressly reserves all his rights and those of the Washington Class which he represents, including, the right to contest W.R. Grace's filing of a putative "Proof of Claim." His present necessity to file an amendment to W.R. Grace's "Proof of Claim," compulsion that Marco Barbanti appear individually and not in his capacity as agent of a Washington Class, as well as all other rights arising out of proceedings precipitated by W.R. Grace's initiation of a "Proof of Claim" in the name of Marco Barbanti, individually.

III. Name and Address where notices should be sent:

Darrell Scott
LUKINS & ANNIS
717 W. Sprague Avenue, Suite 1600
Spokane, WA 99201
Telephone: (509) 455-9555
Facsimile: (509) 747-2323

IV. Basis For Claim:

A. Procedural Context.

1. On April 12, 2002, W.R. Grace filed a putative "Proof of Claim" in the name of Marco Barbanti asserting certain dischargeable property damage claims of Marco Barbanti and citing 11 U.S.C. sec. 501(c) as authority for its doing so.

2. Marco Barbanti is a representative of a class of Washington homeowners in pending civil litigation against W.R. Grace relating to Zonolite Attic Insulation, by Order of the Honorable Kathleen O'Connor of the Superior Court of Spokane County, dated December 19, 2000. Marco Barbanti is a designated agent of that pre-bankruptcy certified class with respect to certain Zonolite Attic Insulation claims against W.R. Grace.

3. The putative "Proof of Claim" filed by W.R. Grace in the name of Marco Barbanti purports to exclude from that claim all class claims for which Marco Barbanti is presently class representative and designated agent.

4. At Omnibus Hearings held April 22, 2002, and May 20, 2002, Bankruptcy Judge Judith K. Fitzgerald stated the Court's position that it would not entertain class claims until a "science trial" was completed as to Grace's potential property damage liability as to Zonolite Attic Insulation.

5. By Motion dated May 10, 2002, Marco Barbanti moved to strike W.R. Grace's putative "Proof of Claim" filed in his name, on various grounds, which are matters of record. At Hearing on that Motion, May 20, 2002, Bankruptcy Judge Judith K. Fitzgerald announced her decision denying Marco Barbanti's Motion in all respects. As of the date of filing

of this amendment to the Proof of Claim filed by W.R. Grace, no Order has been entered on Marco Barbanti's Motion. Marco Barbanti intends to appeal that Order when entered.

6. The Bankruptcy Court further announced on May 20, 2002, that all claimants for whom W.R. Grace had filed "Proofs of Claim," had ten days within which to file amendments to those Proofs of Claim. While no Order has been entered establishing such a deadline, by email received May 28, 2002, counsel for W.R. Grace advised the Official Asbestos Property Damage Committee that the deadlines discussed at the May 20, 2002, hearing were in effect, including a deadline of May 30, 2002, for any amendment to the "Proofs of Claim" filed by W.R. Grace.

7. Marco Barbanti files the present amendment to the Proof of Claim filed by W.R. Grace, as to Marco Barbanti's individual Zonolite property damage claims, under protest and under the circumstances related above, and without waiver of his rights, either individually or as designated agent of a Washington Class, including his right and obligation to timely file claims on behalf of the Washington class which he represents.

B. Claim.

1. ZAI contamination.

Real properties of Marco Barbanti have been contaminated with asbestos from Zonolite Attic Insulation (herein "ZAI"). ZAI consists of expanded vermiculite which is permeated with tremolite asbestos. The installation of the ZAI and each succeeding disturbance of the loose-fill insulation has released dust with very high numbers of respirable asbestos fibers. This asbestos dust contaminates the Barbanti property by a) airborne disbursal during and following each disturbance activity (at levels of 2 to 15 f/cc); b) by accumulation of the settled dust on attic surfaces which dust contains asbestos concentrations measured at **46.8 MILLION** structures per square foot; and c) asbestos and asbestos dust accumulations in the living spaces of the home.

2. Injuries to Property.

As a result of the asbestos contamination from ZAI, Barbanti has

suffered injuries to his property including the following:

- a. Concentrations of asbestos dust in the attic has sharply diminished the market value of the home in an amount not to exceed the cost of removal of the asbestos contamination and associated costs. [For example, by fact sheets dated October 15, 2001, and September 2000, the E.P.A. announced that "anytime Zonolite is disturbed it will release fibers into the air," that "these fibers can be inhaled and become trapped in the lungs and may cause diseases such as asbestosis, lung cancer and mesothelioma," and that occupants of ZAI homes should "avoid any activities that may spread vermiculite" and avoid (for example) "using the attic for storage." (See Exhibits 1 and 2). These officially recognized impairments of the use and safety of the Barbanti homes have diminished their value and marketability.]
- b. The properties bear the added cost burden of compliance with occupational health and industrial hygiene standards and procedures each time a contractor, electrician, insulator, etc. is hired to complete typical rewiring, remodeling, insulation and related activities in the Barbanti attic. [For example, during a typical installation of a ceiling fan in the Barbanti home, air sampling revealed asbestos levels of 6.96 to 12.48 str/cc. Any rewiring or remodeling in a ZAI attic will commonly cause occupational exposures to the contractor which exceed the EPA's standard (1.0 f/cc) for even a short term (30 minutes) of occupational exposure. In fact sheet dated September 2000, the E.P.A. has recommended the use of "certified" professionals to remove ZAI "using a 'negative pressure enclosure' technique" before any remodeling involving the attic of a ZAI home. (See Exhibit 2)].
- c. The living areas of the Barbanti home, including a bedroom, have been contaminated by ZAI and asbestos dust transported from the attic resulting in continuous 24-hour a day exposure necessitating the cost of decontamination of the living spaces of the Barbanti home.
- d. The hidden, undisclosed and self-concealing nature of the asbestos contamination requires communication of warnings to any current or successor occupants of the homes, and to

others who are likely to contact or disturb the attic insulation and/or the asbestos dust contamination. The hidden asbestos danger also causes the expense of containing airborne asbestos whenever ZAI is likely to be disturbed or the attics accessed by uninformed individuals.

3. Legal Basis of Debtor's liability.

- a. Strict product liability.
- b. Negligence.
- c. Deceit, fraudulent concealment, and fraud by non-disclosure.
- d. Unfair and Deceptive Business Practices.

V. Date Debt Was Incurred: This is presently a contingent and unliquidated claim.

VI. If Court Judgment, Date Obtained: Not applicable.

VII. Total amount of claim at Time Case Filed: Twenty thousand (\$20,000) Dollars.

VIII. Secured Claim/Unsecured Priority Claim: This is an unsecured claim.

IX. Supporting Documents: Documents supporting this claim are too numerous to attach or to itemize individually. As presently known, such documents include documents preserved in the W.R. Grace document depository as well as exhibits and depositions previously generated and/or made available by or to the Debtor in connection with Marco Barbanti's real properties in the matter of *Barbanti v. W.R. Grace*.

Respectfully Submitted this 30th day of May, 2002.

By:

William D. Sullivan
William D. Sullivan (No. 21120)

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Attorneys for Zonolite Claimants

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**Questions and Answers
about Asbestos and EPA's Libby Investigation**

Q : If I have vermiculite insulation in my home, what should I do while the EPA is evaluating long term solutions?

A : EPA continues to gather information about vermiculite insulation. To date, sampling results from Libby vermiculite (Zonolite) almost always show some level of tremolite asbestos. More importantly our sampling has indicated that anytime Zonolite is disturbed it will release fibers into the air.

If you have or suspect that you have Zonolite insulation in your home, the safest course of action is to leave the material alone. Avoid any activities that may spread vermiculite and asbestos into your living space such as using the attic for storage. Likewise, seal any spaces, cracks or gaps in the ceiling or around light fixtures through which asbestos could escape from the attic. If you decide to remove or must otherwise disturb the material due to a renovation project, please consult with an experienced asbestos contractor.

The Montana Department of Environmental Quality (DEQ) maintains a list of certified asbestos contractors on its website at:
http://www.deq.state.mt.us/pcd/awm/Forms/ACP_Cons_Cont_Lst.pdf
(approx. 30K, PDF, about PDF files (Webmaster note, this URL is updated since the original newspaper publication))

: You may also contact John Podolinsky in the DEQ Asbestos Control Program at 406-444-2690.

In the meantime, EPA will continue to compile the documents and information necessary to determine whether to remove Zonolite insulation in the Libby area. As soon as the decision is made, we will share this information with the public.

For more information call:

Paul Peronard, On-Scene Coordinator at 1-800-227-8917 x6608

Wendy Thomi, Community Involvement Coordinator at 406-441-1150 x241

October 15, 2001

EPA Libby Links[Community Involvement](#)[Timeline](#)[EPA Libby Asbestos Home](#)[External Link](#)

Environmental Fact Sheet



U.S. ENVIRONMENTAL PROTECTION AGENCY REGION 10

September 2000

ASBESTOS IN ATTIC INSULATION

As a result of recent newspaper articles, the U.S. Environmental Protection Agency (EPA) office in Seattle has received a large number of phone calls from citizens concerned about asbestos-containing insulation in their attics. EPA is working hard to gather more information about attic insulation and other products containing vermiculite that may be contaminated with asbestos.

The following information provides a common sense approach to help you find out what kind of attic insulation you have and decide what to do if you have vermiculite attic insulation.

Background

EPA believes that a number of manufacturers produced attic insulation from vermiculite. One mine in the United States produced over 70 percent of the world's vermiculite before the mine was closed in 1990. Ore from this mine is known to have asbestos contamination which contaminates any products from this ore.

Why is it a Problem?

If disturbed, the asbestos fibers in vermiculite attic insulation may get into the air. These fibers can be inhaled and become trapped in the lungs and may cause diseases such as asbestosis, lung cancer, and mesothelioma. These diseases may show up many years after exposure to asbestos.

What Does it Look Like?

Vermiculite is a mineral that is shaped like a small nugget, and varies in color from silver-gold to gray-brown (see picture at right). The asbestos fibers contained in vermiculite attic insulation are generally too small to be seen without magnification. Only a trained technician using careful microscopic examination can see asbestos fibers.



Pieces of Vermiculite Attic Insulation

What Should I Do if I Have it?

Look at the insulation in your attic without disturbing it. If it appears you have vermiculite attic insulation in your attic, we recommend the following steps:





1. If you do not need to remodel or disturb the insulation, LEAVE IT ALONE! If it's sealed behind wallboards and floorboards or is isolated in an attic that is vented outside, the best approach is to keep it in place.
2. If you are concerned about asbestos contamination in the living quarters of your home, you can consider air monitoring. This will show if any asbestos has been or is being released from the insulation into the air in your home. The air monitoring must be done by trained professionals.
3. If you are planning to remodel or remove your insulation, have the insulation tested first.
 - A. EPA recommends using a trained and certified professional to conduct the tests. Use certified asbestos removal professionals to remove your vermiculite attic insulation using a "negative pressure enclosure" technique. This technique will prevent asbestos fibers and dust from escaping from your attic into the rest of your home. Using professionals is expensive. Do not attempt to do this yourself. You could spread asbestos fibers throughout your home, putting you and your family at risk of inhaling asbestos fibers.
 - B. After the vermiculite attic insulation is removed, you may want to consider having air monitoring tests done in your attic and throughout the living areas of your home. This is to ensure that the concentration of asbestos fibers in the home is low or not present.

How Do I Find a Trained and Certified Asbestos Removal Professional?

A certified asbestos inspector will be able take samples of your insulation, provide you with information on the results, and advise you on what additional tests or options you might consider. Inspectors can be found in the Yellow Pages under "Asbestos Consulting and Testing" or "Asbestos Abatement". Ask the inspector to provide you with the name of the company that trained and certified him or her. Call that company to confirm whether a particular inspector has had the required training and has up-to-date accreditation. Companies that can test the air in your home will be found under the same listings.

Where Can I Get More Information?

New information can be found on the hotline and websites below as it becomes available.

For current information on asbestos and health related information, contact EPA's TSCA Hotline at 1-202-554-1404, or visit EPA's Region 10 website at www.epa.gov/R10earth (click on Index, then Asbestos).

Also visit the federal Agency for Toxic Substances and Disease Registry (ATSDR) website at www.cdc.atsdr.gov, or the Washington State Department of Health at www.doh.wa.gov/ehp/ts.



Materials Analytical Services, Inc.
3945 Lakefield Court
Suwanee, GA 30024
(770) 866-3200

**Summary of Microvac Dust Analysis by
 Transmission Electron Microscopy (TEM)**

Date: 3/21/00
Client Name: Richard Hatfield
Client Job Number/Name: Vermiculite Demonstration, Spokane, Washington
MAS Project Number: M23236 (Dust) & M23237 (Air)

AIR SAMPLES

<u>MAS ID</u>	<u>Sample ID & Location</u>	<u>Total Asbestos Str/cc</u>
M23237-001	#1 Background Outside	BTL *
M23237-002	#2 Paul Liss (right)	9.75
M23237-003	#3 Paul Liss (left)	6.96
M23237-004	#4 Area (on pipe)	12.48
M23237-005	#5 Blank	0

* BTL = Below Detection Limit

DUST SAMPLES

<u>MAS ID</u>	<u>Sample ID & Location</u>	<u>Asbestos Concentration str/sq. ft.</u>	<u>Asbestos Concentration str/cm²</u>
M23236-001	#1 Dust from Attic Under the Vermiculite	46.8 Million	50.3 Thousand

EXHIBIT

G1
 Hatfield, Id

High Office:
 Hutton Street • Suite 101
 Leigh, NC 27606
 (919) 829-7041 • FAX (919) 829-5518

Atlanta Office:
 3945 Lakefield Court
 Suwanee, Georgia 30024
 (770) 866-3200 • FAX (770) 866-3259

CERTIFICATE OF SERVICE

I, William D. Sullivan, Esquire, hereby certify that on May 30, 2002, service of the foregoing

- **Notice of Filing of Amended Proof of Claim of Marco Barbanti**

was made upon the following parties via facsimile.

Laura Davis Jones, Esq.	Debtors	302-652-4400
D.J. Baker, Esq.	Sealed Air Corporation	212-735-2000
Matthew G. Zaleski, Esq.	Asbestos Claimants	302-426-9947
James H.M. Sprayregen, Esq.	Debtor	312-861-2200
Frank J. Perch, Esq.	United States Trustee	302-573-6497
David B. Siegel, Esq.	Grace	410-531-4783
Elihu Inselbuch, Esq.	Personal Injury Committee	212-644-6755
Lewis Kruger, Esq.	Creditors Committee	212-806-6006
Scott L. Baena, Esq.	Property Damage Committee	305-374-7593
William Katchen, Esq.		973-424-2001
Michael R. Lastowski, Esq.	Creditors Committee	302-657-4901

Dated: May 30, 2002

/s/ William D. Sullivan
William D. Sullivan